

Hon. Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ESTHER HOFFMAN; et al.,

PLAINTIFFS,

v.

TRANSWORLD SYSTEMS
INCORPORATION; et. al.,

DEFENDANTS.

Case No.: 18-cv-1132-TSZ

**STIPULATED MOTION AND
ORDER CONTINUING DEADLINES
FOR THE PARTIES TO FILE
DISPOSITIVE MOTIONS AND
EXPERT WITNESS MOTIONS**

I. STIPULATED MOTION

1. Pursuant to LCR 7(d)(1) and LCR 10(g), Plaintiffs and Defendants hereby respectfully submit this stipulated motion for entry of an order (a) continuing the deadlines for the parties to file and brief dispositive motions for summary judgment and motions related to expert witnesses, and (b) allowing the parties to conduct certain depositions after the close of discovery as described below.

2. Plaintiffs have two pending motions seeking discovery from TSI. One was noted

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(212) 415-8600

1 for April 4, 2022. (Dkt. 271) and the other for April 22, 2022 (Dkt. 276) (together, the “Discovery
 2 Motions”). Once the Court decides the pending Discovery Motions, and if either of the Motions
 3 are granted and additional discovery is ordered, additional time may be needed thereafter to
 4 complete this discovery.
 5

6 3. On March 13, 2022, the parties stipulated, and on March 14, 2022, the Court
 7 ordered, that in light of the Discovery Motions, “[w]ithin five (5) days of the Court’s decision on
 8 any motion concerning the scope of [TSI’s] Designated Representative’s required testimony, the
 9 parties shall meet and confer and attempt to agree on new filing deadline and noting dates for TSI’s
 10 Motion for Summary Judgment (Dkt. 161) and responses thereto on a schedule similar to the
 11 current briefing schedule and Plaintiffs’ Motion for Class Certification (Dkt. 232) and responses
 12 thereto on a schedule similar to the current briefing schedule” Dkt. 268, ¶ 9.
 13

14 4. The operative Order Setting Trial and Related Dates (Dkt. 146) set a May 5, 2022
 15 deadline for dispositive motions to be filed and May 12, 2022 deadline for all motions related to
 16 expert witnesses to be filed.
 17

18 5. Because additional motions for summary judgment and motions related to expert
 19 witnesses cannot be briefed and noted by most parties until after depositions of expert witnesses
 20 are completed, and because depositions of expert witnesses cannot be taken until after the Court
 21 decides the pending Discovery Motions (*see* Dkt. 268), the parties have met and conferred and
 22 believe that it is in their best interest, and respectfully submit that it is in the Court’s interest as
 23 well, to stay the current deadlines for filing dispositive motions (currently May 5) and motions
 24 related to expert witnesses (currently May 12) until further order of the Court. This will allow the
 25 Court sufficient time to decide the pending Discovery Motions before motions for summary
 26 judgment are filed.
 27

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1 judgment and motions related to expert witnesses are required to be briefed and noted. The parties
 2 also request leave to depose the Fed. R. Civ. P. 30(b)(6) designees of two non-parties, Boston
 3 Portfolio Advisers, Inc. (“BPA”) and Pennsylvania Higher Education Assistance Agency
 4 (“PHEAA”). BPA was slow in responding to Plaintiffs’ Subpoena for records and the parties agree
 5 that good cause exists to depose both BPA and PHEAA.
 6

7 6. “The district court may modify the pretrial schedule ‘if it cannot reasonably be met
 8 despite the diligence of the party seeking the extension.’” *Johnson v. Mammoth Recreations, Inc.*,
 9 975 F.2d 604, 609 (9th Cir. 1992) (quoting Fed. R. Civ. P. 16 advisory committee’s notes). A
 10 schedule may be modified only for good cause. Fed. R. Civ. P. 16(b)(4); LCR 16(b)(5). When
 11 determining whether a party has demonstrated good cause, the court “primarily considers the
 12 diligence of the part[ies] seeking the amendment.” *Johnson*, 975 F.2d at 609. Here, the parties
 13 have been diligent in working towards completing discovery before the expiration of the
 14 Scheduling Order’s deadline of April 18, 2022. Even though this case is a putative class action
 15 with six named Plaintiffs, eight defendants, and numerous complicated and sensitive discovery
 16 issues, the parties have successfully cooperated and significantly completed fact and class
 17 discovery, and have served expert disclosures under Fed. R. Civ. P. 26. The parties are not
 18 requesting additional time to complete discovery at this time except for additional time to take the
 19 depositions of (1) the parties’ designated expert witnesses; (2) the Fed. R. Civ. P. 30(b)(6)
 20 designated representative of subpoenaed non-party Boston Portfolio Advisers, Inc.; and (3) the
 21 Fed. R. Civ. P. 30(b)(6) designated representative of non-party Pennsylvania Higher Education
 22 Assistance Agency.
 23
 24
 25

26 7. The parties are requesting a continuance because of the uncertainty created by the
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1 pending Discovery Motions. Specifically, Plaintiffs believe that it is necessary for the Discovery
 2 Motions to be resolved and additional discovery directed by the Court's decisions on the Discovery
 3 Motions, if any, be completed in order to finish briefing for most dispositive motions, and motions
 4 related to expert witnesses. The parties each believe that it is appropriate and that there is good
 5 cause to continue these deadlines until after resolution of the Discovery Motions.
 6

7 8. The parties therefore stipulate and agree, and respectfully request, that the current
 8 deadlines for filing dispositive motions and motions related to expert witnesses be stayed until
 9 further order of the Court. Within five (5) days of the Court's decision on the Discovery Motions,
 10 the parties will meet and confer and attempt to agree on new filing and noting deadlines for these
 11 motions and, if necessary, a comprehensive new schedule that accounts for the continued deadlines
 12 to file these motions, as well as the continued noting dates for TSI's Motion for Summary
 13 Judgment (Dkt. 161) and Plaintiffs' Motion for Class Certification (Dkt. 232), which were
 14 previously stayed until further order by the Court's March 14, 2022 Order (Dkt. 268). If the parties
 15 cannot agree, the parties shall submit their proposals for a revised schedule to the Court within
 16 eight (8) days of the Court's decision on the Discovery Motions.
 17
 18

19 9. The next deadline in the current Scheduling Order which the parties are requesting
 20 to continue is the May 5, 2022 deadline for filing of dispositive motions. The Scheduling Order
 21 currently sets a trial date of October 3, 2022. Accordingly, the instant joint motion complies with
 22 LCR 7(j) which instructs that "[a] motion for relief from a deadline should, whenever possible, be
 23 filed sufficiently in advance of the deadline to allow the court to rule on the motion prior to the
 24 deadline."
 25

26 10. The parties agree that all preexisting deadlines that have passed are not to be
 27

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continued or resurrected at this time, except as contemplated herein.

11. The parties agree that this stipulation does not affect the filing or noting date of the pending dispositive motion filed by defendants Matthew Cheung or Patenaude and Felix, APC, (Dkt. 284), or address any party's position on such motion.

STIPULATED this 2nd day of May, 2022.

Attorneys for Plaintiffs:

LEONARD LAW

BERRY & BECKETT, PLLP

/s/ Sam Leonard

/s/ Guy W. Beckett

Sam Leonard, WSBA #46498
3614 California Ave. SW, #151
Seattle, WA 98116
Telephone: (206) 486-1176
Facsimile: (206) 458-6028
Email: sam@seattledbtdefense.com

Guy W. Beckett, WSBA #14939
1708 Bellevue Avenue
Seattle, WA 98122
Telephone: (206) 441-5444
Facsimile: (206) 838-6346
Email: gbeckett@beckettllaw.com

HENRY & DeGRAAF, P.S.

NORTHWEST CONSUMER LAW CENTER

/s/ Christina L. Henry

/s/ Amanda N. Martin

Christina L. Henry, WSBA #31273
119 – 1st Ave. S., Ste. 500
Seattle, WA 98104
Telephone: (206) 330-0595
Facsimile: (206) 400-7609
Email: chenry@HDM-legal.com

Amanda N. Martin, WSBA #49581
936 North 34th Street, Suite 300
Seattle, WA 98103
Telephone: (206) 805-0989
Facsimile: (206) 805-1716
Email: Amanda@NWCLC.org

Attorneys for National Collegiate Student Loan Trust Defendants:

LOCKE LORD LLP

LOCKE LORD LLP

/s/ Gregory T. Casamento

/s/ J. Matthew Goodin

Gregory T. Casamento
R. James DeRose, III
Pro Hac Vice
Brookfield Place
200 Vesey St. 20th Flr.

J. Matthew Goodin
Pro Hac Vice
111 S. Wacker Dr., Ste. 4100
Chicago, IL 60606
Telephone: (312) 443-0472

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200 VESEY STREET, 20TH FLOOR
NEW YORK, NEW YORK 10281
(212) 415-8600

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New York, NY 10281-2101
Email: gcasamento@lockelord.com
rderose@lockelord.com

Email: jmgoodin@lockelord.com

FOSTER GARVEY PC

/s/ Tim J. Filer
Tim J. Filer, WSBA #16285
1111 Third Ave., Ste. 3000
Seattle, WA 98101
Telephone: (206) 447-4000
Email: tim.filer@foster.com

Attorneys for Defendant Transworld Systems Inc.

SESSIONS, ISRAEL & SHARTLE

/s/ Justin Homes
Justin Homes
Bryan C. Shartle
Pro Hac Vice
3850 N. Causeway Blvd., Ste. 200
Metairie, LA 70002-7227
Telephone: (504) 828-3700
Email: jhomes@sessions.legal
bshartle@sessions.legal

Attorneys for Defendants Patenaude & Felix, A.P.C., Matthew Cheung, and Cheung marital community:

LEE SMART, P.S., INC.

/s/ Marc Rosenberg
Marc Rosenberg, WSBA #31034
1800 One Convention Place
701 Pike Street
Seattle, WA 98101-3929
Telephone: (206) 624-7900
Email: mr@leesmart.com

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II. ORDER

The Court having considered the foregoing stipulated motion, and finding that good cause has been shown for the requested relief, now therefore, it is hereby

ORDERED, as follows:

1. The current deadlines for the parties to file dispositive motions for summary judgment and motions related to expert witnesses as set forth in the Court's Order Setting Trial and Related Dates (Dkt. 146) are hereby stayed until further order of the Court.

2. Within five (5) days of the Court's decision on Plaintiffs' motions seeking discovery from TSI that are pending before the Court (Dkt. 271, 276) (together, the "Discovery Motions"), the parties shall meet and confer and attempt to agree on new filing and noting deadlines for dispositive motions for summary judgment and motions related to expert witnesses and, if necessary, a comprehensive new schedule that accounts for the continued deadlines to file these motions, as well as the continued noting dates for TSI's Motion for Summary Judgment (Dkt. 161) and Plaintiffs' Motion for Class Certification (Dkt. 232), which were stayed until further order by the Court's March 14, 2022 Order (Dkt. 268). If the parties cannot agree, the parties shall submit their proposals for a revised schedule to the Court within eight (8) days of the Court's decision on the Discovery Motions.

3. The parties are granted leave to take the depositions of expert witnesses designated under Fed. R. Civ. P. 26(a)(2), within 30 days of the Court's decision on the pending Discovery Motions.

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